REMARKS

I. Preliminary Remarks

Applicants gratefully acknowledge the Examiner's withdrawal of the 35 USC §112, first paragraph (enablement) rejection of Claims 31-35, 39-40 and 53-55.

II. Priority

At page 3 of the subject Office Action ["Office Action"], the Examiner states that

> [t]he disclosure of the prior-filed application, Application No. 08/260,190 (now US Patent 6,774,117), fails to provide adequate support in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application.

The Examiner continues at the top of page 4 of the Office Action:

> **[T]he disclosure of US Patent 6,774,117 provides adequate support** for individual elements or parts of the claimed antisense construct **in a different context** (e.g., naked antisense oligonucleotides, a construct comprising full length antisense MN cDNA) than what is actually being claimed in the instant case. Note that the purpose of the written description requirement set forth in the first paragraph of 35 USC 112 is to "to ensure that the inventor had possession, as of the filing date of the application relied on, of the specific subject matter later claimed by him." *In re Edwards*, 568 F.2d 1349, 1351-52, 196 USPQ 465, 467 (CCPA 1978). (emphasis added).

[Emphasis in bold added; underlined emphasis in Office Action.] Applicants respectfully traverse, maintaining that Applicants can be shown to have possession of the instantly claimed invention at the very least as of the June 15, 1994 filing date of the '117 patent.

The Manual of Patent Examining Procedure [MPEP § 2163 (II)(A)(e)(b) states: "The Examiner has the initial burden of presenting evidence or reasoning to explain why person skilled in the art would not recognize in the original disclosure a description of the invention defined by the claims." It is Applicants' respectful contention that that initial burden of the examiner has not been met. For example, the Guidelines for Examination of Patent Applications Under the 35 USC 112, ¶1 "Written Description"

Requirement, 66 Fed. Reg. 1009 (Jan. 5, 2001) ("Guidelines") **only** specify that all the claim limitations or elements must be explicitly or implicitly described in the specification, but do not specify that all claim limitations or elements must appear in the specification in the same context, as stated by the Examiner. However, Applicants respectfully but emphatically maintain that the following remarks show that even if the Examiner's initial burden had been hypothetically initially carried, that the Applicants would have successfully rebutted that hypothetically carried initial burden, showing with strong evidence that the instant specification and that of the '117 patent, as well as its original claims, provide adequate written description for the instant claims.

The Federal Circuit in In re Kaslow, 217 USPQ 1089, 1096 (Fed. Cir. 1983) established that "[t]he test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed **reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language**." [Emphasis added.] Exemplary PTO Board decisions include *Ex parte Sorenson*, 3 USPQ2d 1462, 1463 (Bd. Pat. App. & Int'f 1987) which states:

> [W]e are mindful that appellant's specification need not describe the claimed invention in *ipsis verbis* to comply with the written description requirement. . . . **The test is whether the originally filed specification disclosure reasonably conveys to a person having ordinary skill that applicant had possession of the subject matter later claimed**. . . .

[Emphasis added.] **It is *possession, not* the presence or absence of *literal support* that is the test for compliance with the written description requirement**. Applicants respectfully detail below just why one of skill in the art could only reasonably think that the Applicants, who discovered the MN gene and the successful use of MN antisense vectors and MN antisense oligonucletides to inhibit MN gene expression, had possession of the instantly claimed MN antisense vectors at least at the '117 patent's filing date.

Applicants first respectfully argue as in their previous response dated September 12, 2007 [at pages 9-17] to the written description rejection (later withdrawn)

of Claims 31-35, 39-40 and 53-55, that the MPEP at §2163.07(a) makes clear that a specification is interpreted according to what one of ordinary skill in the art would understand is supported both explicitly and implicitly, and that the claims may be amended accordingly without adding new matter. Applicants respectfully submit that the '117 patent and instant specification (as a continuation thereof) "reasonably conveys" to a person having ordinary skill that the Applicants had possession of the claimed invention at the claimed priority date. One of skill in the art would realize in light of the subject specification's disclosure, particularly in view of what was conventionally known in the art, that the Applicants had possession of the aspect of the invention of substituting fragments of MN antisense DNA in the place of full-length antisense DNA (cDNA) in a vector, particularly in view of the specification's disclosure showing MN antisense oligonucleotides inhibiting cell growth when added to exemplary cells (as shown in the '117 patent's and instant specification).

Applicants respectfully submit that the claims only make explicit what one of skill in the art would understand from the implicit teachings of the instant specification (which is the same as that of its parent, now the '117 patent). Applicants respectfully point out below that each and every limitation of the claims has been described in the '117 patent.

Using the standard established in In re Kaslow, supra, Applicants respectfully, but emphatically, contend that the '117 specification "reasonably conveys" to one of skill in the art that the inventors had possession of the claimed invention at the filing date of the '117 patent, from which the instant application claims priority and is a continuation. Applicants respectfully submit that no one of skill in the art could reasonably doubt that the Applicants -- Zavada et al. -- had possession of the claimed invention at the subject priority date and are the inventors of the subject claims based on 1) support in the '117 specification for all of the limitations of the instant claims; 2) the 1991 Mercola review article incorporated by reference in the '117 specification [see instant specification at page 92, lines 9-22 (particularly at line 22), and at page 143, lines 4-5]; 3) the Gruenert Declaration Under 37 CFR Section 1.132 ["Declaration", submitted with the January 4, 2007 response]; and 4) the original claims filed in the '117 patent. At the least, the support in the '117 patent for all of the limitations in the instant

claims, and the incorporated by reference 1991 Mercola review article, which described experiments successfully using antisense oligonucleotide vectors to inhibit expression of two oncogenes, would reasonably convey to one of skill in the art that at the subject priority date, the Applicants had possession of the claimed antisense oligonucleotide vectors derived from the MN gene, which Zavada et al. (the Applicants) discovered.

Written Description Requirement for Claims Asserting Entitlement to the Benefit of an Earlier Priority Date

The Examiner appears to be basing the instant rejection on the absence of literal support in the '117 patent for the claimed MN antisense oligonucleotides constructs:

> Since the actual structure of the claimed construct *per se* having all of the structural limitations set forth in the claims is neither described nor suggested in the disclosure of US Patent 6,774,117, the benefit of an earlier filing date is denied in the instant case. Accordingly, the instant filing date of March 8, 2004 will be the effective filing date for the instantly claimed invention in claims 31-35, 39-40, and 53-55.

[Office Action, middle of page 4; emphasis in original.] However, description of a particular structure is not the standard for the written description requirement. MPEP § 2163 (I)(B) states that "[t]he fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed."

The guidelines regarding adequate written description for claims asserting entitlement to the benefit of an earlier priority date are covered in MPEP § 2163 (II)(A)(3)(b), which reads in part:

> To comply with the written description requirement of 35 U.S.C. 112, para. 1, or to be entitled to an earlier priority date or filing date under 35 U.S.C. 119, 120, or 365(c), each claim limitation must be **expressly, implicitly, or inherently supported** in the originally filed disclosure.

[Emphasis added.] Notably, the written description guidelines do not state that each claim limitation must be literally supported in the same context in the originally filed

disclosure. The conditions under which a claim for priority "must be denied" for lack of adequate written description are: "if the originally filed disclosure does not provide support for each claim limitation, or if an element which applicant describes as essential or critical is not claimed." [MPEP § 2163(II)(A)(3)(b).] That is not the case here: each and every limitation of the instant claims are supported in the parent '117 specification (infra), and no element described as essential is omitted.

Evidence of Applicants' Possession of the Claimed Invention

Evidence of the Applicants' possession of the instantly claimed invention is drawn below from 1) support in the '117 specification for the limitations of the instant claims; 2) the 1991 Mercola review article incorporated by reference in the '117 specification; 3) the Gruenert Declaration; and 4) the original claims filed in the '117 patent application. Applicants respectfully submit that such evidence "*reasonably conveys*" to the skilled artisan that the Applicants had possession of the claimed subject matter at least at the claimed priority date of the '117 patent.

A. Support in the Disclosure for MN Antisense Oligonucleotide Constructs

The Examiner admits in the instant Office Action that the Specification of the '117 patent supports the individual limitations of Claim 31, which comprise: 1) an MN antisense construct comprising a nucleic sequence from which an MN antisense nucleotide is transcribable; 2) wherein said nucleic acid sequence is operably linked to an expression control sequence in a vector; 3) wherein said MN antisense construct shows antisense activity in an in vitro screening assay; and 4) examples of MN antisense nucleotides that are MN antisense oligonucleotides capable of inhibiting MN gene expression.

As indicated[1] in the Preliminary Amendment dated March 8, 2004 (at page 43), and in the response dated September 13, 2007 (at page 13), general support for

1. In the instant response, all of the support for the claims is identified by page and line numbers in the instant application. As the instant application is a

claims 31-40 concerning MN antisense constructs and their use appears in the instant specification at the least at page 5, lines 1-21; at page 15, lines 3-14; at page 36, line 1 to page 37, line 11; at page 92, line 1 to page 94, line 8; and at page 151, lines 20-22. Exemplary support for antisense vectors appears at the least at page 65, line 9 to page 67, line 9, particularly at page 66, lines 1-9; and at page 94, lines 9-11, wherein an antisense MN cDNA/MN promoter construct used to transfect CGL3 cells is described. As indicated in the Supplementary Preliminary Amendment dated November 29, 2004, at pages 10-12, additional support for Claims 53-55 can be found at 24, lines 12-17; at page 39, lines 17-22; and at page 93, line 24 to page 94, line 8.

At page 52, line 14 to page 57, line 6, the specification describes vectors, primarily vectors for recombinant production of MN proteins and polypeptides; and particularly at page 53, line 18 to page 54, line 1, describes the use of recombinant vectors to produce "additional recombinant nucleic acid molecules as a source of MN nucleic acid and fragments thereof." Support for the MN antisense nucleotide being an oligonucleotide of between 19 to 29 nucleotides in length can be found at page 93, line 26 to page 94, line 5, which states: "Particularly preferred are the 29-mer ODN1 and 19-mer ODN2 for which the sequences are provided in Example 10, infra. Those antisense ODNs are representative of the many antisense nucleic acid sequences that can function to inhibit MN gene expression."

As particular evidence that the inventors had possession of vectors expressing fragments derived from the 5' end of the MN cDNA, Applicants respectfully point to the specification at page 15, lines 3-14, which reads:

> This invention also concerns methods of treating neoplastic disease and/or pre-neoplastic disease comprising inhibiting the expression of MN genes by administering antisense nucleic acid sequences that are substantially complementary to mRNA transcribed from MN genes. Said antisense nucleic acid sequences are those that hybridize to such mRNA under stringent hybridization conditions. Preferred are antisense nucleic acid sequences that are substantially complementary to sequences at the 5' end of the MN cDNA sequences shown in Figure 1A-1B and/or in Figure 15.

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continuation of the '117 patent, corresponding support is necessarily found in the specification of the '117 patent.

Preferably said antisense nucleic acid sequences are oligonucleotides.

[Emphasis added.]

Applicants respectfully submit that such extensive support for the limitations of the claims reasonably conveys to the skilled artisan that the inventors had possession of the claimed MN antisense oligonucleotide vectors, as of the filing date of the '117 patent.

B. 1991 Mercola Review Article Incorporated by Reference

Further, Applicants respectfully point out that the '117 Specification discloses antisense oligonucleotide vectors by incorporation of the 1991 Mercola review article [incorporated in the Specification at page 92, lines 9-22 (particularly at line 22) of the instant specification: Mercola, D., "Antisense fos and jun RNA," pp. 83-114, Prospects for Antisense Nucleic Acid Therapy of Cancer and AIDS, (Wiley-Liss, Inc., New York, NY, USA; 1991); copy enclosed in response dated September 12, 2007], and that Applicants had possession of the claimed invention at least as of the filing date of the '117 patent. At the least, the 1991 Mercola article teaches the feasibility of cloning antisense oligonucleotides of variable length into a vector, which is capable of inhibiting the expression of the corresponding gene. For example, Mercola teaches that "[a] wide range of sequences all containing 5' portions of the c-*fos* gene have been used as a source of antisense RNA production or DNA antisense oligonucleotide synthesis. Similarly the 5' coding region of c-*jun* has been used for the preparation of plasmids designed to express antisense RNA." [Mercola, at page 107, right column.] That incorporated Mercola reference, combined with above-cited support for MN antisense vectors and MN antisense oligonucleotides which inhibit MN gene expression provides strong evidence that ones of skill of the art would recognize that the inventors had possession of MN cDNA **fragments** expressed by a vector to inhibit MN gene expression, particularly those comparable to the externally-applied cDNA **fragments** which were shown by the inventors to have the same function as full-length cDNA expressed by vectors (i.e., to inhibit MN gene expression) in the '117 disclosure, at the '117 priority date.

Moreover, Mercola 1991 teaches that numerous laboratories investigated the regulation of c-*fos* and c-*jun* using plasmids designed to express antisense *fos* or *jun* RNA of varying lengths and derived from the 5' end of the respective gene [see, e.g., Figure 4 of Mercola 1991, at page 88]. For example, Mercola 1991 cites the work of Schönthal et al. [Schönthal et al., Cell, 54: 325-334 (1988); Schönthal et al., Cold Spring Harbor Symp. Quant. Biol., 53: 779-787 (1988)], stating that

> [i]n order to determine the effects of antisense *jun* RNA on this system a 40-bp synthetic oligonucleotide of the c-*jun* sequence starting 33 bp upstream from the translation start site was inserted in antisense orientation downstream of the SV40 promoter. . . . Cotransfection with this vector in place of pSV*jun* led to a 3-fold increase in basal transcription over the control value.

[Mercola 1991, at page 92, col. 2.] [Applicants respectfully point out that because Fos and Jun function to repress the endogenous promoter, the 40 bp antisense oligonucleotide increased transcription, rather than repressing it.]

Mercola 1991 also cites to Holt et al., who used plasmids expressing antisense c-*fos* using fragments from the 5' region of the gene, of 84 bp, 196 bp, or 301 bp in length [PNAS U.S.A. 83: 4794-4798 (1986)]; while Mercola et al. [Gene, 72: 253-265 (1988)] used c-*fos* fragments of 410 bp in length. [Figure 4 of Mercola 1991, supra.] Applicants respectfully submit that those teachings of Mercola 1991 provide strong evidence that **the Applicants were aware at the priority date of the '117 patent of the suitability of substituting fragments of the MN cDNA (such fragments comprising MN antisense oligonucleotides) for MN full-length cDNA in the MN antisense vectors described in the subject specification.**

C. The Gruenert Declaration

Applicants respectfully submit that once an appropriate antisense target is identified, it is conventional knowledge to use the same modes of administration, dosage ranges as used therapeutically for other antisense nucleic acids, including those modes of administration identified by Mercola 1991. The 1.132 Declaration of Dr. Gruenert supports that statement. Dr. Gruenert declared in Section 8 "that the

published literature taught routine methods for designing, making, delivering, and evaluating oligonucleotides for successful in vivo use."

Applicants respectfully point out that the Gruenert Declaration specifically cites, as support for the therapeutic efficacy of MN antisense oligonucleotides, the transfection experiments using MN antisense constructs described in the instant Specification. By citing those experiments, Dr. Gruenert indicated that the technology and biological effects of MN antisense constructs were applicable to MN antisense oligonucleotides.

Dr. Gruenert declares at page 3, Section 3(a) of the Declaration:

> I declare that the in vitro results shown in the subject specification, for example at pages 65-67, reasonably predict in vivo therapeutic efficacy of MN antisense oligonucleotides for the following reasons. First, there is a strong association of MN gene expression with tumorigenesis. Second, transfection experiments with MN sense and antisense constructs, in non-tumorigenic and tumorigenic cell lines, respectively, show that MN sense constructs cause non-tumorigenic cells to exhibit a transformed phenotype, whereas the antisense constructs cause the tumorigenic cells to have a very much lowered proliferation rate and to form smaller colonies than controls. Third, prior studies show that the in vitro effects observed in studies of other, structurally similar oligonucleotides, correlate with in vivo therapeutic effects.

[Emphasis added.]

Applicants respectfully direct the Examiner's attention to the fact that Dr. Gruenert (as quoted above) alternatively cites evidence from experiments using MN antisense oligonucleotides and MN antisense constructs as support for the utility of MN antisense oligonucleotides, indicating that one of skill in the art understands that the biological effects of MN antisense constructs would also apply to MN antisense oligonucleotides. In combination with the incorporated Mercola 1991 review article [supra], which taught the delivery of antisense oligonucleotides using constructs which inhibited the growth of HeLa tumor cells, one of skill in the art could not reasonably think other than that the inventors had possession of the claimed MN antisense oligonucleotide constructs at least at the filing date for the '117 patent.

D. **Original Claims Filed in the '117 Patent**

Finally, Applicants respectfully submit that the original claims filed in the '117 patent indicate that the inventors had possession of vectors expressing fragments of MN cDNA, in addition to vectors expressing full-length cDNA. Original Claim 6 is directed to "[a]n isolated nucleic acid according to Claim 1 operatively linked to an expression control sequence within a vector." The nucleic acid of Claim 1 is one

> containing at least fifty nucleotides wherein the nucleotide sequence for said nucleic acid is selected from the group consisting of: (a)SEQ. ID. NOS.: 1, 5, 23 and nucleotide sequences complementary to SEQ. ID. NOS.: 1, 5 or 23; . . .

Applicants respectfully point out that the vector claimed in original Claim 6 of the '117 patent comprised fragments of a partial MN cDNA [SEQ ID NO: 1, 1397 bp in length] or fragments of a full-length MN cDNA [SEQ. ID. NO.: 5, 1519 bp in length], operatively linked to an expression control sequence in a vector. Based on those original claims 1 and 6, combined with the disclosure of fragments of MN cDNA having SEQ ID NOS: 3 and 4 as effective in inhibiting MN gene expression, the disclosure of MN antisense vectors comprising full-length MN cDNA as effective in inhibiting MN gene expression, and the identification of preferred antisense nucleotides as oligonucleotides "that are substantially complementary to sequences **at the 5' end** of the MN cDNA sequences shown in Figure 1A-1B and/or in Figure 15" [page 15, lines 10-14], one of ordinary skill in the art would have considered that the inventors had possession of antisense vectors comprising fragments of MN cDNA in addition to full-length MN cDNA, at least as of the claimed June 15, 1994 priority date.

Conclusion on Priority

Can there be any "reasonable" doubt that the Applicants -- Zavada et al. -- had invented the use of MN antisense nucleotide sequences in the context of the application, including vectors with MN antisense oligos, as well as antisense cDNA, particularly in view of what was conventionally known in the art at the time of the claimed priority date, in view of the support in the specification? Who else could have invented the claimed subject matter but Zavada et al., who discovered the MN gene and

the successful use of MN antisense nucleic acids to inhibit MN gene expression? Once the MN gene was discovered, and the successful use of MN antisense olignucleotides to inhibit MN gene expression was exemplified, all aspects conventionally known in the art and described in the specification at the claimed priority date would be within the scope of the invention, that is, what one of skill in the art would recognize as having been invented and in possession of the Applicant.

An important aspect of the claimed invention concerns the discovery by the Applicants that MN nucleic acids complementary to the MN cDNA (SEQ ID NOS: 1 and 5) are useful for antisense therapy of preneoplastic/neoplastic diseases associated with abnormal MN gene expression. Once the inventors identified MN as a putative oncogene and discovered that MN's antisense nucleic acids exhibited antisense activity, one of skill in the art would certainly recognize that the Applicants had possession of MN antisense vectors expressing fragments of those antisense nucleic acids, *a fortiori*, when Applicant provided actual examples of MN antisense cDNA expressed from a vector exhibiting successful antisense activity.

In view of the above remarks, explanations and case law discussion, Applicants respectfully request that the Examiner reconsider and withdraw the instant denial of the claim to priority from the '117 patent, based on lack of adequate 35 USC §112, ¶1 written description.

III. 35 USC § 103(a) Rejection

Common Ownership

The Office Action states at page 5 that "Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a)." Applicants are respectfully aware of their duty under 37 CFR 1.56 concerning reporting lack of common ownership of any claimed aspects of the invention at the time it was made, and declare that the invention as claimed was commonly owned at the time all claimed aspects were made.

Zavada et al. '226 in view of Benedetti et al. 1991

Claims 31-35, 39-40 and 53-55 stand rejected under 35 U.S.C. 103(a) "as being unpatentable over Zavada et al. (US 6,051,226) in view of Benedetti et al. (*Molecular and Cellular Biology*, 1991, 11:5435-5445, citation of record)." [Office Action at page 5.] The Office Action continues at page 5-7:

> Zavada et al. teach [that] MN antisense oligonucleotides of SEQ ID NOs:3 and 4 inhibit MN expression in HeLa cells. . . . They teach that the two antisense oligonucleotides are representative of many antisense oligonucleotide sequences that can function to inhibit MN gene expression and that one of ordinary skill in the art would be able to determine appropriate antisense sequences from the MN cDNA sequence. . . .
>
> . . . .
>
> It would have been obvious to one of ordinary skill in the art at the time the invention was made to make and use an expression vector-based antisense construct to express MN antisense olgionucleotides in human tumor cells both *in vitro* and *in vivo* by following the methodology used in Benedetti et al.

Applicants respectfully traverse that rejection, pointing out that absent a statutory bar, Zavada et al., U.S. Patent No. 6,051,226 ("the '226 patent") cannot be "prior art" to the instant Zavada et al. claimed invention. As the Zavada et al. '226 patent was issued on April 18, 2000, and as explained in detail above, the instant application's effective filing date is at least June 15, 1994, the filing date of its parent application [U.S. Serial No. 08/260,190; now U.S. Patent No. 6,774,117 ("the '117 patent")] (of which the instant application is a continuation)], the Zavada et al. '226 patent cannot be a statutory bar. As Benedetti et al. does not concern MN/CA IX, and the Zavada et al. '226 patent is not prior art, Applicants respectfully submit that the subject 103(a) rejection cannot be effective against the instantly claimed invention.

The Manual of Patent Examining Procedure (MPEP) § 715.01(c) states:

> Unless it is a statutory bar, a rejection based on a publication may be overcome by a showing that it was published either by applicant himself/herself or in his/her behalf. . . . *Ex parte Lemieux*, 115 USPQ 148, 1957 C.D. 47, 725 O.G. 4 (Bd.

App. 1957); *Ex Parte Powell*, 1938 C.D. 15, 489 O.G. 231 (Bd.App. 1938).

[MPEP § 715.01(c), first paragraph.] As the Court of Customs and Patent Appeals (CCPA)[2] stated: "Absent a statutory bar under 35 USC 102(b), (c), or (d), an applicant's own invention cannot be 'prior art' to him." [In re Fout, Mishkin, and Roychoudhary, 213 USPQ 532 (CCPA 1982) at 535, Footnote 2.]

As the Zavada et al. '226 patent was issued on April 18, 2000, well after the at least June 15, 1994 effective filing date of the instant Zavada et al. application, and reports the Applicants' (Zavada et al.'s) own work and discloses their "own invention," it "cannot be 'prior art' . . ." [*id.*] to the instantly claimed Zavada et al. invention. The undersigned Attorney for the Applicants declares that the Zavada et al. '226 patent is the subject Applicants' (Zavada et al.'s) own work, and that the inventions described and claimed in the '226 patent are the subject Applicants' (Zavada et al's) own. Applicants respectfully conclude that in accordance with the relevant case law, expressed to an extent in MPEP § 715.01(c), and in view of the claimed invention having sufficient written description in at least its parent application (now the '117 patent) as detailed in the above section that addresses and overcomes the office action's priority challenge, the Zavada et al. '226 patent cannot be prior art to the instantly claimed invention.

As the Benedetti et al. 1991 reference has nothing to do with the MN oncogene/oncoprotein (which had not even been reported as discovered until after Benedetti et al. was published), Benedetti et al. alone cannot anticipate or render obvious the claimed MN invention. Applicants respectfully request that the Examiner reconsider and withdraw the instant 35 USC § 103(a) rejection in view of the above explanatory remarks and relevant case law.

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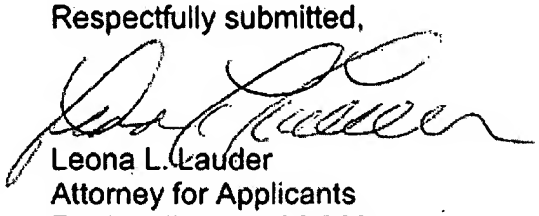
2. The CCPA is a predecessor court to the Court of Appeals for the Federal Circuit. In the Federal Circuit's first reported opinion, South Corp. v. United States, 215 USPQ 657 (Fed. Cir. 1982), the Federal Circuit adopted as binding precedent "the holdings of our predecessor courts, the United States Court of Claims and the United States Court of Customs and Patent Appeals [CCPA]. . . ."

CONCLUSION

Applicants respectfully submit that Claims 31-35, 39-40 and 53-55 are in condition for allowance, and earnestly request that the claims be promptly allowed. If for any reason the Examiner feels that a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to telephone the undersigned Attorney for Applicants at (415) 981-2034.

Respectfully submitted,



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